

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**LYLE BROWNING, ET AL.**

**RESPONDENTS,**

**v.  
GUIDEONE SPECIALTY MUTUAL  
INSURANCE COMPANY**

**APPELLANT.**

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DOCKET NUMBER WD72484

DATE: June 7, 2011

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Appeal From:

Benton County Circuit Court  
The Honorable John W. Sims, Judge

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Appellate Judges:

Division One: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Alok Ahuja, Judge

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Attorneys:

Ronald K. Barker, Lee's Summit, MO, for respondents.

Kevin P. Schnurbusch and Maureen A. McMullan, St. Louis, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**LYLE BROWNING, ET AL.,**

**RESPONDENTS,**

**v.**

**GUIDEONE SPECIALTY MUTUAL  
INSURANCE COMPANY,**

**APPELLANT.**

No. WD72484

Benton County

Before Division One: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Alok Ahuja, Judge

This is a declaratory judgment and vexatious refusal to pay action based on disputed insurance coverage for an accident that occurred when Plaintiff's motorcycle was run off the road by another vehicle. GuideOne Specialty Mutual Insurance Company ("GuideOne"), insured the motorcycle and appeals the judgment of the trial court, which after a bench trial found in favor of Lyle and Linda Browning ("Plaintiffs") as it pertained to Plaintiffs' declaratory judgment and vexatious refusal to pay action against GuideOne.

In August 2002, Plaintiffs were riding their motorcycle, when Joseph Hagston crossed the center line thereby forcing Plaintiffs off the road and into the ditch because of Hagston's undisputed negligence. Plaintiff Linda Browning sustained injuries as a result of this accident, with medical bills eventually exceeding \$150,000.00. On the date of the accident, Plaintiffs had a motorcycle insurance policy, issued by GuideOne ("Policy"). In Count One, Plaintiffs alleged that under the Policy, there was Underinsured Motorist ("UIM") coverage of \$50,000.00 for each person and \$300,000 for each accident. The Petition went on to allege that Plaintiffs complied with all the conditions contained in the policy and GuideOne refused to pay benefits under the policy claiming that there is no coverage under the policy for UIM claims. In Count Two, Plaintiffs alleged that GuideOne denied coverage under the Policy without reasonable and just cause and that, therefore, this constituted a vexatious refusal to pay benefits under the Policy.

After a bench trial, the trial court found in favor of Plaintiffs on both of their claims. The trial court found that the Policy is ambiguous as it relates to Uninsured/Underinsured motorist coverage and resolved this "ambiguity" in favor of coverage as a matter of law. In total, the trial court entered a judgment in favor of Plaintiffs and against GuideOne in the amount of \$114,638.64 plus costs.

**REVERSED AND REMANDED**

Division One holds:

GuideOne argues that the trial court erred in finding that the GuideOne insurance policy was ambiguous and provided UIM coverage to Plaintiffs because, as a matter of law, the policy is not ambiguous under its plain language and no UIM coverage was provided. After reviewing the Policy, we conclude that the trial court erred in finding that the Policy was ambiguous as a matter of law. It is undisputed that, although the Policy contained an endorsement denominated “**UNINSURED MOTORISTS COVERAGE**,” it did not contain such an endorsement denominated **underinsured motorist coverage**. The declarations page clearly stated the specific terms under which UM Coverage was provided and *did not provide that UIM coverage was extended in the Policy*. Based on all the foregoing, we find nothing in the Policy that changed the declarations page or reflected a different intention anywhere in Policy. The trial court focused on language in the Policy stating in its “Limits of Liability” section that its liability was *limited* and that “[a]ny amount payable under this coverage to or for an injured person may be reduced by any payment made to that person under any Uninsured Motorists or Underinsured Motorists Endorsement *attached to this policy*.” In reviewing the language in question, it should be clear to the average layperson that this language only *limits* benefits, as opposed to extending them. The trial court also focused on the fact that the policy does not provide an exclusion or denial of UIM coverage. We find no authority in Missouri that stands for the proposition that the failure to exclude UIM coverage in a vehicular insurance policy alone somehow demonstrates that the parties intended to contract for UIM coverage.

Because this Court concludes that the Policy did not provide for UIM coverage as a matter of law, it must follow that Plaintiffs are not entitled to any monetary judgment from GuideOne based on a theory that GuideOne refused to pay the loss without reasonable cause or excuse pursuant to Section 375.420. Therefore, the award in favor of Plaintiffs and against GuideOne must be vacated. The judgment of the circuit court is hereby reversed and the cause remanded for further proceedings consistent with this opinion.

Opinion by Gary D. Witt, Judge

June 7, 2011

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